

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-51083-GFK
Chapter 7

Troy T. and Marla J. Beaty

Debtor(s).

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY**

TO: Debtor(s) and Attorney for Debtor(s); Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. TCF Mortgage Corporation (“TCF Mortgage Corporation”), a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 1:30 p.m. on Wednesday, November 3, 2004, before the Honorable Gregory F. Kishel in Courtroom No. 2, United States Courthouse, 515 West 1st Street, Duluth, Minnesota 55802 or as soon thereafter as counsel can be heard.

3. Any objection to the relief requested herein must be filed and delivered not later than October 29, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 25, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion is filed pursuant to Bankruptcy Rule 4001 and TCF Mortgage Corporation seeks relief from the automatic stay of 11 U.S.C. § 362 with respect to certain real property owned by Debtor(s).

5. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed.R.Bankr.P. 5005, 11 U.S.C. §362(d), Local Rule 1070-1 and applicable rules. This is a core proceeding. The petition commencing this Chapter 7 case was filed September 28, 2004, and the case is now pending in this Court

6. By mortgage dated October 9, 2001, in the original principal amount of \$83,868.00 (the "Mortgage"), TCF Mortgage Corporation holds a mortgagee's interest in the following real property (the "Property"):

Lots One (1), Two (2), Three (3), and Four (4), Block Twenty 20, Grand Rapids First Division, Itasca County, Minnesota

Address: 517 NE 5th Avenue, Grand Rapids, Minnesota 55744

7. The Mortgage was filed in the offices of such County. A copy of the Mortgage is attached hereto as Exhibit A.

8. Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of February 2004, through September 2004, in a total amount \$6,388.32, plus interest, late charges, attorneys' fees and costs. The outstanding balance due TCF Mortgage Corporation under the terms of the note is \$87,289.33 plus interest, late fees attorneys' fees and costs.

9. TCF Mortgage Corporation does not have adequate protection of its interest in the Property, which constitutes cause, within the meaning of 11 U.S.C. § 362(d) (1), entitling TCF Mortgage Corporation, to relief from the automatic stay. In addition, TCF Mortgage Corporation

requests that the stay imposed by Rule 4001(a) (3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that TCF Mortgage Corporation may immediately enforce and implement this Order granting relief from the automatic stay.

10. If testimony is necessary as to any facts relevant to this motion J. McCall will testify on behalf of TCF Mortgage Corporation.

11. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, TCF Mortgage Corporation respectfully moves the Court for an order modifying the automatic stay of 11 U.S.C. § 362 so as to permit TCF Mortgage Corporation to foreclose the Mortgage on the Property and for such other relief as may be just and equitable.

Dated: October 5, 2004

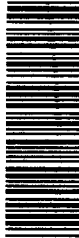
MACKALL, CROUNSE & MOORE, PLC

By: /e/Andrew P. Moratzka
Andrew P. Moratzka (#0322131)
Attorneys for Movant
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, Minnesota 55402
(612) 305-1400

91-415-2005

OFFICE OF THE COUNTY RECORDER
ITASCA COUNTY, MINNESOTA

Registration Tax on \$ 192.48 paid
ITASCA CO. NO 34013
Robert D. Zuehlke, Auditor/Treasurer
Jay Laker, Deputy



Doc. No. **A 532410**

Certified filed and recorded on

10/12/2001 at 10:20 am

Jean E. Bengston, Itasca County Recorder

by W, Deputy

532410

When Recorded, Mail To:
BAYSIDE BANK
14617 HWY 7

MINNETONKA, MN 55345

[Space Above This Line For Recording Data]

MORTGAGE

FHA CASE NO.

271-8552637

THIS MORTGAGE ("Security Instrument") is given on OCTOBER 9, 2001
The mortgagor is TROY T. BEATY AND MARLA J. BEATY, HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to

BAYSIDE BANK, CORPORATION
which is organized and existing under the laws of MINNESOTA
518 SOUTH POKEGAMA AVE
GRAND RAPIDS, MN 55744

, and whose address is

("Lender"). Borrower owes Lender the principal sum of

EIGHTY THREE THOUSAND SIX HUNDRED EIGHTY SIX AND NO/100

Dollars (U.S. \$ 83,686.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER 1, 2031 and for interest at the yearly rate of 7.5000 percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in ITASCA County, Minnesota:

Lots One (1), Two (2), Three (3), and Four (4), Block Twenty (20),
Grand Rapids First Division.

which has the address of 517 NE 5TH AVE, GRAND RAPIDS
[Street]

[City]

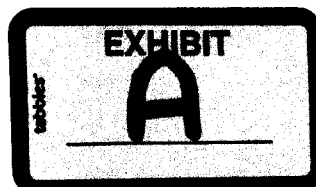
Minnesota: 55744 ("Property Address");
[Zip Code]

FHA MINNESOTA MORTGAGE

ITEM 6598L1 (9705) MFMN3212 - 07/97

(Page 1 of 7 pages)

3066-611089465 6/96
To Order Call: 1-800-530-9393 GREATLAND ■
Fax 616-791-1131



TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance, and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

FIRST, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

SECOND, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

THIRD, to interest due under the Note;

FOURTH, to amortization of the principal of the Note; and

FIFTH, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair

of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j - 3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within SIXTY DAYS from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to SIXTY DAYS from the date hereof, declining to insure this Security

Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this paragraph 18 or applicable law.

19. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

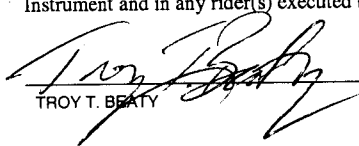
21. **Interest on Advances.** The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

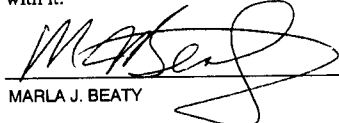
[Check applicable box(es)]

- | | | |
|---------------------------------------------------------|--------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Growing Equity Rider |
| <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Rehabilitation Loan Rider |
| <input type="checkbox"/> Non-Owner Occupancy Rider | <input type="checkbox"/> Other [Specify] | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in pages 1 through 7 of this Security Instrument and in any rider(s) executed by Borrower and recorded with it.



(Seal)
TROY T. BEATY -Borrower



(Seal)
MARLA J. BEATY -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

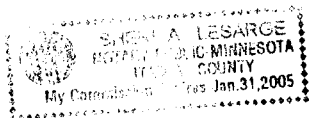
Witness:

Witness:

STATE OF MINNESOTA, ITASCA

County ss:

The instrument was acknowledged before me on OCTOBER 9, 2001
by TROY T. BEATY AND MARLA J. BEATY, HUSBAND AND WIFE





Notary Public

My Commission expires:

This instrument was drafted by

Name: BAYSIDE BANK

Address: 516 SOUTH POKEGAMA AVE.
GRAND RAPIDS, MN 55744

Tax statements for the real property described in this instrument should be sent to

Name: TCF Mortgage Corporation
Wholesale Division
Address: Mail Code #001-04-T
801 Marquette Ave.
Minneapolis, MN 55402

532410

[Space Above This Line For Recorder's Use]

Corporation Assignment of Real Estate Mortgage

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
TCF MORTGAGE CORPORATION, A MINNESOTA CORPORATION, 801 MARQUETTE AVF
MINNEAPOLIS, MN 55402 all the rights, title and interest of undersigned
in and to that certain Real Estate Mortgage dated OCTOBER 9, 2001, executed by
TROY T. BEATY AND MARLA J. BEATY, HUSBAND AND WIFE

to BAYSIDE BANK
organized under the laws of MINNESOTA
of business is 516 SOUTH POKEGAMA AVE
GRAND RAPIDS, MN 55744
and recorded in Liber page(s)
State of MINNESOTA

a corporation
and whose principal place

ITASCA County Records.
described hereinafter as follows:

Lots One (1), Two (2), Three (3), and Four (4), Block Twenty (20),
Grand Rapids First Division.

Certified to as a true and
correct copy of the original
hereof.

Date: 10/16/01

By: [Signature]

Closer

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Real Estate Mortgage.

Janet M. Bennett
By: JANET M. BENNETT / BAYSIDE BANK
Its: ASSISTANT SECRETARY

By:
Its:

Witness:

Witness:

STATE OF MINNESOTA
COUNTY OF ITASCA

On OCTOBER 12, 2001
said County and State, personally appeared

before me, the undersigned, a Notary Public in and for
JANET M. BENNETT

known to me to be the ASSISTANT SECRETARY

and N/A

known to me to be N/A

of the corporation herein which executed the within instrument, ~~that the said person to be said instrument was~~
~~an authorized officer of said corporation;~~ that said instrument was signed ~~and sealed~~ on behalf of said corporation
pursuant to its by-laws or a resolution of its Board of Directors and that he/she acknowledges said instrument
to be the free act and deed of said corporation.

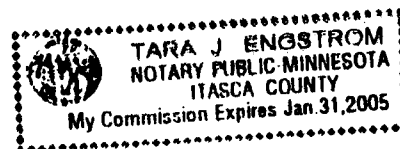
Tara J. Engstrom
Notary Public:

My Commission expires:

PREPARED BY:
BENNETT, J. M.
BAYSIDE BANK
516 SOUTH POKEGAMA AVE
GRAND RAPIDS, MN 55744

AND WHEN RECORDED MAIL TO:
BAYSIDE BANK
14617 HWY 7

MINNETONKA, MN 55345



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Troy and Marla Beaty
TCF #611089465

Bky. No. 04-51083

Chapter 7

Debtor(s).

UNSWORN DECLARATION

I, Janice McCall, of TCF Mortgage Corporation declare under penalty of perjury that the facts contained herein are true and correct to the best of my knowledge, information and belief:

1. I am an employee of TCF Mortgage Corporation and have personal knowledge of the facts set forth herein.
2. Attached hereto is a true and correct copy of the mortgage made by Debtor(s) (the "Mortgage").
3. TCF Mortgage Corporation is the present holder of the Mortgage.
4. February 2004 through September 2004 are the months that remain unpaid pursuant to the note secured by the Mortgage (the "Note").
5. \$6,388.32 is the outstanding delinquency under the Note.
6. \$87,289.33 is the outstanding balance due under the Note.
7. \$88,500.00 is the approximate fair market value of the property described in the Mortgage.
8. Other defaults exist as follows: \$984.18 F/C Fees

Dated: September 29, 2004



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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-51083-GFK
Chapter 7

Troy T. and Marla J. Beaty

Debtor(s).

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

Debtor(s).

TCF Mortgage Corporation (“TCF Mortgage Corporation”) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

TCF Mortgage Corporation holds a valid, duly perfected mortgage on real property owned by Debtor(s). Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of February 2004, through September 2004, in a total amount \$6,388.32, plus interest, late charges, attorneys’ fees and costs. The outstanding balance due TCF Mortgage Corporation under the terms of the note is \$87,289.33 plus interest, late fees attorneys’ fees and costs. .

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor “for cause, including the lack of adequate protection of an interest in property of such [creditor].” 11 U.S.C. § 362(d)(1). The Bankruptcy Code states that adequate protection may be provided by requiring cash payments from the trustee to the entity seeking relief, by providing the entity seeking relief a replacement lien, or granting the entity seeking relief the indubitable equivalent of their interest. 11 U.S.C. § 361. Here, Debtor(s) failed to make the payments required by the note and mortgage for the months of February 2004, through September 2004. Because the validity of the mortgage has not been

challenged, the default by the debtor has not been disputed, and the trustee has not opposed lifting the automatic stay, the default alone entitles TCF Mortgage Corporation to relief from the automatic stay. *See In re Elicker*, 100 B.R. 180, 183 (Bkrtcy.M.D.Pa. 1989). Furthermore, there has been no attempt by Debtor(s) to otherwise provide TCF Mortgage Corporation with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362(d)(1), justifying relief from the stay.

Accordingly, TCF Mortgage Corporation is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property. In addition, TCF Mortgage Corporation requests that the stay imposed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that Client may immediately enforce and implement this Order granting relief from the automatic stay.

Dated: October 5, 2004

Respectfully submitted,

MACKALL, CROUNSE & MOORE

By: /e/Andrew P. Moratzka
Andrew P. Moratzka (# 0322131)
Attorneys for Movant
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, Minnesota 55402
(612) 305-1400

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-51083-GFK
Chapter 7

Troy T. and Marla J. Beaty

Debtor(s).

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Amy Ditty, employed by Mackall, Crounse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay, Memorandum in Support of Motion and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

(Trustee)
Robert R. Kanuit
4815 W. Arrowhead Road
Suite 230
Hermantown, MN 55811

(Debtor(s))
Troy T. Beaty
517 NE Fifth Avenue
Grand Rapids, MN 55744

(Attorney for Debtor(s))
John P. Dimich
102 NE 3rd Street
Suite 120
Grand Rapids, MN 55744

(Co-Obligor)

Marla J. Beaty
2407 County Road B
Grand Rapids, MN 55744

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: October 7, 2004

Signed: /e/Amy J. Ditty

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-51083-GFK
Chapter 7

Troy T. and Marla J. Beaty

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on November 3, 2004, at the motion of TCF Mortgage Corporation (“TCF Mortgage Corporation”) seeking relief from the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code. Appearances were noted in the Court’s record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling TCF Mortgage Corporation to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code is immediately terminated and TCF Mortgage Corporation and/or its assignees and/or successors in interest, is hereby authorized to foreclose its mortgage on the following property:

Lots One (1), Two (2), Three (3), and Four (4), Block Twenty 20, Grand Rapids First Division, Itasca County, Minnesota

Address: 517 NE 5th Avenue, Grand Rapids, Minnesota 55744

In addition, notwithstanding Federal Rule of Bankruptcy Procedure 4001(a) (3) this order is effective immediately.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge